



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 9, 1998

Mr. Scott Fawcett
Legal Counsel
Open Records Division
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR98-0643

Dear Mr. Fawcett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 113623.

The Comptroller of Public Accounts (the "comptroller") received a request for "copies of all filings in Hearing No. 34,506." You contend that some of the requested information is excepted from public disclosure under section 552.101 of the Government Code in conjunction with section 111.006(a)(2) of the Tax Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 111.006(a)(2) states that information "secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer" is confidential. Tax Code § 111.006(a)(2). The hearing about which the requestor seeks information relates to a 1994 taxpayer audit that resulted in a deficiency. The taxpayer sought an administrative determination, and the comptroller has not yet issued its decision on the matter. The documents at issue include a notice of tax due, administrative hearing documents such as the comptroller's position letters, orders and motions, and correspondence between the taxpayer and the comptroller. You claim that portions of all of these documents are made confidential by Tax Code section 111.006(a)(2) and are, therefore, excepted from disclosure under section 552.101 of the Government Code.

You have marked information in the submitted documents that the comptroller obtained from the taxpayer during its examination of the taxpayer. This information is confidential under section 111.006(a)(2). You have also marked information that you contend identifies the taxpayer. With

the exception of Exhibit G in Enclosure 4, we agree that the information you have marked identifies the taxpayer and is, therefore, confidential under section 111.006(a)(2). *See* Open Records Letter Nos. 97-2510 (1997) (requiring comptroller to de-identify documents filed in connection with administrative hearing), 96-2203 (requiring comptroller to de-identify position letters); *cf.* Attorney General Decision No. H-223 (1974) (requiring comptroller to de-identify administrative hearing decisions under predecessor of Tax Code section 111.006). Thus, all of the information you have marked, except for Exhibit G, is excepted from disclosure under section 552.101. The comptroller must release Exhibit G and all of the unmarked information to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 113623

Enclosures: Submitted documents

cc: Mr. Jay A. Thompson
Clark, Thomas & Winters, P.C.
P.O. Box 1148
Austin, Texas 78767
(w/o enclosures)